

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO MARCEDONIO Y VILLANUEVA AND ANTONIO MARCEDONIO Y VILLANUEVA, ACCUSED-APPELLANTS.

G.R. Nos. 78551-52. December 21, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The Court affirms the joint decision rendered by the Regional Trial Court, Quezon City, Branch 98,[1] in Criminal Cases Nos. Q-31388 and Q-31389, finding the accused-appellants guilty of murder and frustrated murder. The dispositive portion thereof reads as follows:

WHEREFORE PREMISES CONSIDERED, the Court finds both accused, ROLANDO MARCEDONIO y VILLANUEVA and ANTONIO MARCEDONIO y VILLANUEVA, guilty beyond reasonable doubt of the crimes of Murder and Frustrated Murder and hereby sentences each to the penalty of reclusion perpetua in Criminal Case No. Q-31388 and 8 years, 1 day to 10 years of prision mayor in Criminal Case No. Q-31389. Further, both accused are hereby ordered to indemnify the heirs of Bienvenido Berenguel, jointly and severally, in the sum or P30,000.00 without subsidiary imprisonment in case of insolvency.

SO ORDERED.[2]

The same originated from two informations filed by Assistant City Fiscal Cipriano Roma of Quezon City, alleging as follows:

CRIM. CASE NO. Q-31388:-

That on or about the 15th day of January, 1984 in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to kill and without any justifiable cause, and qualified by evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of BIENVENIDO BERENGUEL y VIRGO, by then and there stabbing him with a bladed instrument in the abdomen and at the upper right side of his body, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of deceased victim in such amount as may be awarded under the provisions or the Civil Code.

CONTRARY TO LAW.[3]

CRIM. CASE NO. Q-31389:?

That on or about the 15th day of January, 1984, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court the above-named accused, conspiring together, confederating with and mutually helping one another, did then and there wilfully, unlawfully and feloniously, with intent to kill and without any justifiable motive, attack, assault and employ personal violence upon the person of CONRADO BERENGUEL y AUSA, by then and there mauling and stabbing him at the back with a bladed instrument thus inflicting upon him

serious and mortal wounds, the offender thus performing all the acts of execution which would produce death as consequence, but which nevertheless did not produce death by reason of causes independent of the will of the perpetrator, that is the timely medical assistance rendered to said CONRADO BERENGUEL y AUSA, to the damage and prejudice of the offended party in such amount as may be awarded under the provisions of the Civil Code.

CONTRARY TO LAW.[4]

The version of the prosecution is that on January 15, 1984, at or about 7:45 p.m., Conrado Berenguel was on his way to a store at Barrio Bathala, Seminary Road, in Quezon City, whereupon, the two accused accosted him and asked for money with which to purchase liquor. He allegedly refused, upon which, the former took turns in inflicting blows on him. Yet, he managed to flee towards the Quezon City General Hospital; however, they caught up with him until he fell down. Moments later, they dived at him with knives while he lay sprawled on the ground.

And as he lay there, Bienvenido Berenguel, Conrado's cousin, intervened to pacify the accused. One of them however grabbed him by the arms and as he stood helpless, the other repeatedly stabbed him.

The Berenguels were thereafter rushed to the Quezon City General Hospital. Conrado, who survived, spent P300.00 for treatment of stab wounds. Bienvenido, however, did not make it. His remains were later transported to the Rey Memorial Homes, and after his sister, Salvation Berenguel, paid a total of P5,100.00 for various funeral and burial services, were laid to rest.

Bienvenido died as a consequence of stab wounds, sustained as follows:

x x x [t]hat in that diagram sketch, he found three (3) stab wounds on the abdomen of Bienvenido Berenguel, two of which were in front and the other one on the left side back portion; that he also noted two (2) incise wounds on the body of the victim, one of them was indicated on the lower portion of the right side of the chest and the other one on the front side of the abdomen; and that the foregoing findings were all contained in the final autopsy report N-84-148 he made (Exhs. "G", "G-1" to "G-4").[5]

The accused, on the other hand, claim that it was Conrado who attacked them with a "shoe knife" while playing chess in front of the store. The latter, who was allegedly drunk, kicked the chess board upon which, they (the accused) fell down. Conrado supposedly began hitting both of them with his knife, injuring them, after which they ran toward their house where Concepcion Marcedonia (Antonio's wife; Rolando's sister-in-law) dressed their wounds.

They were brought allegedly to the Quezon City Memorial Hospital for further treatment.

As we indicated, the trial court convicted both accused and sentenced them accordingly.

The accused are before the Court on appeal, alleging that the trial court erred, in essence, in finding them guilty beyond reasonable doubt.

The accused also urge the Court "not to defer" to the factual findings of the trial court on the ground that the judge who penned the decision was not the judge who presided over the trial.[6]

The rule is that the Court generally defers to the findings of the trial judge. An accepted exception is where the judge who penned the decision was not the judge who tried the case. What must be clarified here, however, is that the records themselves bare the evidence that points to the guilt of both accused beyond reasonable doubt, and warrants an affirmance of such findings.

The testimony of one of the victims, Conrado Berenguel, is indeed revealing:

DIRECT EXAMINATION:

ATTY. CARGO:

Q - On January 15, 1984 at around 7:45 o'clock in the evening, do you recall where you were?

A - Yes, sir.

Q - Where were you then at that time and date?

A - I went to the store to buy a cigarette when a group approached me and asked for liquor money and I refused and told them that I don't have money.

Q - And where was this store where you were going at that time to buy a cigarette?

A - At the scene of the crime.

Q - And where is this scene of the crime where you are about to buy a cigarette in a store?

A - At Barrio Bathala, Seminary Road, Quezon City.

Q - When you stated that you were met by a group of persons and these persons demanded some liquor money, what did you say when they demanded liquor money from you?

A - I said that I have no money to give them and they got angry and boxed me suddenly.

Q - You mentioned a group of persons who were demanding a liquor money, how many persons in the group?

A - There were two.

Q - Now, do you recognize these two persons who are demanding liquor money from you?

A - Yes, sir.

Q - Are they present in court?

A - Yes, sir.

Q - What are the names of these two persons who are demanding liquor money from you?

A - Antonio Marcedonio and Rolando Marcedonio.

Q - Will you kindly point these two persons before this Honorable Court?

A - There they are. (Witness pointed to two persons who stood up and acknowledged the name of Artemio[7] Marcedonio and Rolando Marcedonio.)

Q - You stated that when you failed to give these two persons a (sic) liquor money they boxed you and what did you do after that?

A - I ran.

Q - And what happened when you ran?

A - They chased me.

Q - Were they able to catch up with you?

A - I fell to the ground when I was running.

Q - And what happened next?

A - When I fell on the ground, they started stabbing me.

Q - And what did you do when they started stabbing you?

A - While they were stabbing me I rolled on the ground.

Q - Now, were you hit by the stabs of these two persons?

A - Yes, sir, I was hit at the back.

Q - And what happened next? When you were hit at the back?

A - While I was hit at the back my cousin Bienvenido Berengel came and pacified them.

Q - And where as this Bienvenido Berengel your cousin, as you testified, where is he now?

A - He is dead.

Q - Do you know the cause of his death?

A - Yes, sir.

Q - What was the cause of his death?

A - The brothers Artemio Marcedonio and Rolando Marcedonio, helped each other in stabbing him.

Q - And where were you at the time when these brothers Artemio Marcedonio and Rolando Marcedonio were stabbing your cousin Bienvenido Berengel?

A - I was lying on the ground while they were stabbing my cousin Bienvenido Berengel.

Q - Now, you mentioned about two persons stabbing your cousin, do you know the identity or these two persons?

A - Yes, sir.

Q - And who are these persons?

A - Artemio Marcedonio and Rolando Marcedonio.[8]

The accused have shown no ill-motive that may have impelled Conrado to lie at the stand.

The alleged inconsistencies of the prosecution witness, Pacifico Berenguel, the brother of victim Bienvenido, as to the following: (1) his statement to the police did not make mention of the incident regarding Conrado, but only Bienvenido; and (2) he said that at the time of the incident, he was "in the house,"[9] then "at the door"[10] and then at a "killing place";[11] refer to lapses on insignificant points, which do not negate his eyewitness account of the two accused in the act of stabbing, repeatedly, the two victims. As Pacifico declared furthermore, on his alleged omission regarding Conrado in his statement to the police, his paramount concern was his brother Bienvenido who was in a worse condition. Secondly, his "inconsistency" with respect to his whereabouts does not erase the fact that he witnessed the Marcedonios flagrante delicto.

What evidently the accused neglected to state is the fact that, assuming Pacifico blundered, Conrado's testimony was enough to support the conviction assailed. And obviously, the Marcedonios have offered no convincing arguments to persuade us why we should reject Conrado's testimony as well.

The accused can not successfully argue that because they were allegedly "very drunk" they could not have, based on alleged rules of science, chased the Berenguels, ganged up on them, and inflicted the stab wounds in question.

The hard fact is that notwithstanding their intoxicated condition, they were seen in the act or consummating their dastardly act, a fact self-serving scenarios and handy theories can not overthrow.

We can not lend credence to claims that it was Conrado Berenguel who in fact assaulted them, and for which they allegedly in fact sustained stabbing injuries of their own. As the lower court noted, while the accused presented a medical certificate, they failed to present the physician to affirm it. We agree that in the absence or the doctor's testimony, it constitutes hearsay testimony.

We also agree, as the trial court held, that Conrado could not have attacked the two and succeeded in inflicting stab wounds on them, without the latter putting up a fight. Their own narration does not show that Conrado, in allegedly attacking them, did so with treachery and surprise.

The evidence shows that the stabbing was done with treachery, consisting in the Marcedonios' clear effort to harm the victims with no risk to themselves.[12] Treachery qualifies a killing into murder.[13]

We can not, however, accept the penalty imposed by the trial court as to Criminal case No. Q-31389, that is, eight years and one day to ten years, since the penalty for frustrated murder under Article 50 of the Revised Penal Code is prision mayor in its maximum period to reclusion temporal in its medium period. Eight years and one day to ten years is actually prision mayor in its medium period only. Hence, the lower court failed to prescribe the proper penalty.

The Court therefore Sentences the accused, as far as Criminal Case No. Q-31389 is concerned, on account or frustrated murder, to eight years and one day to ten years and one day of prision mayor.

WHEREFORE, the accused are sentenced: (1) [G.R. No. 78551 (Crim. Case No. Q-31388)] to reclusion perpetua; and (2) [G.R. No. 78552] (Crim. Case No. Q-31389)] to eight years and one day, to ten years and one day of prision mayor.

The decision appealed from, except for the above modification, is **AFFIRMED** in toto. No costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Peralejo, Cezar, Presiding Judge.

[2] Rollo, 54.

[3] Id., 50.

[4] Id., 50-51.

[5] Id., 52.

[6] It was Hon. Remigio Zari; see id., 9-42. Judge Peralejo took over Judge Zari at the trial of November 11, 1986. The accused invoke the cases of *People v. Villapana*, No. 53984, May 5, 1988, 161 SCRA 72 and *People v. Escalante*, No. L-37147, August 22, 1984, 131 SCRA 237, as authorities for this view.

[7] This accused is also known as Artemio (Torseda), T.s.n., Session of June 11, 1986, 6; Session of July 17, 1986 (cross-examination), 8.

[8] T.s.n., Session of April 25, 1984, 3-5.

[9] T.s.n., Session of March 25, 1984, 5.

[10] Id., 12.

[11] Id., 9.

[12] People v. Israel, G.R. No. 80406, November 20, 1990.

[13] REV. PEN. CODE, art. 248; par. 1.

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